

Trooper Joseph Mata asks me to reconsider my decision to dismiss his Title VII retaliation claim. He makes two arguments. First, his February 18, 1998 grievance concerning his transfer from day shift to night shift constitutes protected expression against which Title VII prohibits retaliation. Second, even if Mata did not engage in protected expression until November 12, 1998 (when he explicitly claimed racial and national origin discrimination), he suffered adverse employment actions after that date. In my previous order, I decided Mata's February 18 grievance was not protected expression and the post-November ISP conduct was not sufficiently adverse to be actionable. I must defer to the allegations of the complaint.

Mata uses the term "discrimination" in his February 18 grievance; he says the arbitrary and malicious transfer violates his contract and "the inequity of the violation in my estimation is glaringly gross and borderlines on discrimination." Complaint Exh. 6. Mata does not mention national origin or race. Protected expression must concern an unlawful employment practice (e.g., discrimination on the basis of national origin or race). *Hamner v. St. Vincent Hospital and Health Care Center, Inc.*, 224 F.3d 701, 704-705 (7th Cir. 2000) (complaint about sexual orientation harassment is not protected expression).

From the face of the grievance, one cannot determine whether Mata thought his transfer bordered on discrimination against seniority or discrimination against race. Title VII protects only the latter. Given the procedural posture, I must draw inferences in Mata's favor. See *Ozturk v. Motorola, Inc.*, 1998 WL 182515 *11 (N.D. Ill. 1998) (conclusory accusation of "discrimination" in letter constitutes protected expression). In this case, Mata did not go so far as to accuse the ISP of discrimination -- just something short of it. A fair reading of the grievance suggests he was concerned with seniority, not race. However, this question is better resolved at summary judgment. Therefore, the February 18 grievance may be included in the retaliation claim as protected expression, but the issue may be revisited after further factual development.

Mata was denied two promotions (to CVEO and to Sergeant) after February 18, but before November 12. A denial of a promotion is an adverse employment action, therefore Mata does state a claim for retaliation (he sufficiently alleges causation as well).

I adhere to my view that Capt. Martin's memorandum, "Bad Boy" school, and the failure to investigate the seat belt warning were not materially adverse employment actions. These actions did not cause any tangible employment consequence for Mata. For example, he does not allege that because of these acts he was no longer eligible for certain benefits. *Oest v. Illinois Dept. of Corrections*, 240 F.3d 605, 613 (7th Cir. 2001). However, according to the complaint, Master Sergeant Hines's negative performance evaluation had an effect on Mata's chances at promotion; more so than the evaluation at issue in *Smart v. Ball State University*, 89 F.3d 437 (7th Cir. 1996). The complaint does not say whether the lower score took Mata out of the top ten, which is what matters for promotability (all troopers in the top ten are equally eligible for promotion). At this stage, however, I will allow the allegation to stand.

Therefore, I reconsider my dismissal of Mata's retaliation claim. That claim is reinstated, and Mata may proceed on a theory that the denial of his promotions and his negative performance evaluation were in retaliation for his complaints of discrimination. Of course, the other incidents may be relevant evidence of discrimination. *Oest*, 240 F.3d at 613.

Mata also seeks to amend his § 1983 claims against Martin and Hines (which were not dismissed in their entirety) to allege personal involvement in certain acts and to allege speech on a matter of public concern prior to December 21, 1998. Since such leave is to be given freely, defendants have not answered the complaint and no discovery has occurred, I will allow Mata to amend.

The motion to reconsider is granted [28-1]. The motion for leave to amend is granted [27-1].